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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,211	04/25/2001	Phillip Davis	0701.027	8804
7590	11/17/2004		EXAMINER	
ST ONGE STEWARD JOHNSTON & REENS 986 BEDFORD STREET STAMFORD, CT 06905			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

JW

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/843,211	DAVIS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Gregory J. Strimbu	3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 August 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 37-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 37-53 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

***Terminal Disclaimer***

The terminal disclaimer filed on August 26, 2004 has been approved.

***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on September 4, 2002 and March 5, 2003 have been approved.

***Claim Rejections - 35 USC § 112***

Claims 37-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an elongated base structure" on line 2 of claim 37 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a couple or the combination of a couple and a pair of organizers. The preamble of claim 37 implies the subcombination while the positive recitations of each of the organizers implies the combination.

***Double Patenting***

The terminal disclaimer filed August 26, 2004 has overcome the double patenting rejection presented in the previous Office action.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 52 is rejected under 35 U.S.C. 102(b) as being anticipated by Price et al.

Price et al. discloses a system for coupling a pair of instrument organizers together comprising at least two instrument organizers 12, each instrument organizer comprising an elongated base structure having a top surface 22, a front surface (not numbered, but shown in figure 2) extending from the top surface, a rear surface (not shown) extending from the top surface, and located on an opposing side of the base structure from said front surface, the distance from the front surface to the rear surface designating a width of the base structure, and at least one terminal end (not numbered, but shown in figure 2), at least one protrusion 6, 8 positioned at the at least one terminal end, at least one movable stabilizing structure 30 for supporting at least one surgical instrument in a generally upright state, the at least one moveable stabilizing structure having, a body portion 32, a fastener 44 for fastening the moveable stabilizing structure to the elongated base structure, the fastener having a length that is not greater than a height of the base structure, and a coupling device 4 for connecting the pair of instrument organizers together.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darlak in view of Denton. Darlak discloses an instrument organizer 10 comprising an elongated base structure 12 having a top surface 26, a front surface 24 extending from the top surface, a rear surface 28 extending from the top surface, and located on an opposing side of the base structure from said front surface, the distance from the front surface to the rear surface designating a width of the base structure, and at least one terminal end (not numbered, but shown in figure 2), at least one protrusion 17 positioned at the at least one terminal end, at least one movable stabilizing structure 14 for supporting at least one surgical instrument in a generally upright state, the at least one moveable stabilizing structure having a body portion (not numbered, but shown in figure 2), a fastener 21 for fastening the moveable stabilizing structure to the elongated base structure, the fastener having a length that is not greater than a height of the base structure. Darlak is silent concerning a pair of instrument organizers and a coupling device.

However, Denton discloses a coupling device 14 comprising a collar for coupling a plurality of elements 3 together for shipping.

It would have been obvious to one of ordinary skill in the art to provide Darlak with a coupling device, as taught by Denton, to increase the ease with which the instrument organizers can be connected for shipping.

***Allowable Subject Matter***

Claims 37-51 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach a couple for coupling a pair of instrument organizers each comprising an elongated base structure having a top surface, a front surface and a rear surface, the front surface and the rear surface each extending from the top surface, and the front surface and the rear surface each disposed on opposing sides of the base structure, the elongated base structure comprising a width measured from the front surface to the rear surface and the elongated base structure including opposed terminal ends, at least one upstanding post fixedly positioned at one of the terminal ends of the base structure, at least one movable stabilizing structure comprising a body portion and self-gripping means extending away from the body portion and having at least a portion of which engage the front and rear surfaces of the base structure for stabilizing and supporting at least one surgical instrument in a generally upright state at least partially on the organizer and the self-gripping means having a length that is not greater than a height of the base structure, and a coupling device for connecting the pair of instrument organizers together. See claim 37, lines 1-16. Additionally, the prior art of record fails to teach a couple for coupling a pair of instrument organizers for at least partially supporting surgical instruments each organizer comprising an elongated base having a

substantially uniform width and defining a continuous surface extending from a first side surface to an opposing second side surface thereof, the elongated base including two terminal ends, at least one fixed end post extending from one of said terminal ends of the base, at least one movable stabilizing structure including a central body having two self-gripping legs extending generally parallel to each other, the self-gripping legs having opposing, inwardly facing surfaces spaced apart a distance substantially equal to the width of the base of the instrument organizer, the opposing, inwardly facing surfaces of the two self-gripping legs being dimensioned and configured to solely grip the first and second side surfaces of the base of the instrument organizer, respectively, so that the movable stabilizing structure is attachable to the base of the instrument organizer and the central body is held in place by the self-gripping legs for retaining the surgical instruments in an organized and upright state partially on the organizer, and a coupling device for connecting the pair of instrument organizers together wherein, the central body of the movable stabilizing structure includes an upwardly extending post comprising a first side surface and a second side surface that each define a plane that extends in a direction that is generally perpendicular to a longitudinal axis of the elongated base when the movable stabilizing structure is mounted to the elongated base, each self-gripping leg of the movable stabilizing structure including a first side surface and a second side surface each of which defines a plane that also extends in the direction that is generally perpendicular to the longitudinal axis of the elongated base when the movable stabilizing structure is mounted to the elongated base, and the plane defined by the first side surface of the upwardly extending post and the planes

defined by the first side surfaces of the self-gripping legs are generally coplanar and the plane defined by the second side surface of the upwardly extending post and the planes defined by the second side surfaces of the self-gripping legs are generally coplanar.

See claim 44, lines 1-32.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant has presented new claims 37-53 which necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-

305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
November 12, 2004